

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 WACO DIVISION
4 VLSI TECHNOLOGY LLC *
5 *
6 VS. * CIVIL ACTION NO. AU-19-CV-977
7 *
8 INTEL CORPORATION * February 1, 2021

9 BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
10 DISCOVERY HEARING (via Zoom)

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10:03 1 (February 1, 2021, 10:03 a.m.)

10:03 2 DEPUTY CLERK: Discovery Hearing in Civil Action
10:03 3 1:19-CV-977, styled VLSI Technology LLC versus Intel
10:03 4 Corporation.

10:03 5 THE COURT: If I could hear announcements, please,
10:03 6 starting with the plaintiff and then for defendant.

10:03 7 MR. MANN: Good morning, Your Honor. Mark Mann on behalf
10:03 8 of VLSI, along with Andy Tindel, and my colleagues from Irell &
10:04 9 Manella, Ian Washburn and Michael Harbour. And we're ready to
10:04 10 proceed.

10:04 11 THE COURT: Mr. Ravel?

10:04 12 MR. RAVEL: Your Honor, Steve Ravel for defendant Intel.
10:04 13 Our client rep today is Mashood Rassam. Jim Wren is here with
10:04 14 us. Bill Lee sends his regrets, but here from Wilmer are Liv
10:04 15 Herriot, whose first argument you assigned a five-star Yelp
10:04 16 rating about six months ago.

10:04 17 (Laughter.)

10:04 18 MR. RAVEL: Amanda Major, Joe Mueller, and our primary
10:04 19 speaker today will be Mark Selwyn.

10:04 20 THE COURT: Okay. I'm happy to take up whatever you all
10:04 21 would care for me to take up.

10:04 22 MR. SELWYN: Good morning, Your Honor. Mark Selwyn for
10:04 23 Intel. We're here to address Intel's request for relief from
10:04 24 the protective order.

10:04 25 THE COURT: Okay.

10:04 1 MR. SELWYN: As Your Honor will recall, the protective
10:04 2 order entered in this case states at Paragraph 65 that it is
10:05 3 entered without prejudice to the right of any party to apply to
10:05 4 the Court at any time for additional protection or to relax or
10:05 5 rescind the restrictions of this order when convenience or
10:05 6 necessity requires.

10:05 7 In Paragraph 43 of the protective order which relates to
10:05 8 the use to which designated material may be put, similarly
10:05 9 contemplates that the Court may order relief from the
10:05 10 restrictions of the protective order. And that language in the
10:05 11 Court's protective order is hardly unique. Protective orders
10:05 12 generally include language regarding the ability of any party
10:05 13 to seek to relax or rescind restrictions imposed by a
10:05 14 protective order on how documents may be used.

10:05 15 Judge Chen, who is presiding over the antitrust litigation
10:05 16 involving VLSI and Intel in the Northern District of California
10:05 17 also in his decision recognized that a party is generally free
10:06 18 to seek relief from protective orders to use otherwise
10:06 19 restricted information and documents for purposes of related
10:06 20 litigation.

10:06 21 Last month Judge Chen, when he dismissed Intel and Apple's
10:06 22 amended complaint based on what he identified as shortcomings
10:06 23 in the level of detail alleged, wrote that Intel and Apple,
10:06 24 "could have asked the courts presiding over the VLSI
10:06 25 infringement suits against Intel for relief from the protective

10:06 1 order so that they can make a filing under seal in this case to
10:06 2 provide further evidence to support their allegations."

10:06 3 THE COURT: Meaning the case out there -- when you say
10:06 4 "this case," meaning the case --

10:06 5 MR. SELWYN: Correct.

10:06 6 THE COURT: Okay. Got it.

10:06 7 MR. SELWYN: I'm quoting from his decision.

10:06 8 THE COURT: Got it.

10:06 9 MR. SELWYN: And he granted leave to amend, ruling that
10:06 10 Intel and Apple could file an amended complaint that includes
10:07 11 the information that he found to be missing.

10:07 12 So that's why we are here today. Intel is seeking relief
10:07 13 from the protective order entered in this case so that it may
10:07 14 file under seal in the antitrust litigation the three very
10:07 15 specific pieces of information that we have identified in the
10:07 16 joint table submitted to the Court before this hearing.

10:07 17 And the three pieces of information are the following:
10:07 18 The cost to acquire two of the patents-in-suit, statements made
10:07 19 by VLSI's expert regarding the alleged value and significance
10:07 20 of the '357 patent and statements made by VLSI's expert
10:07 21 regarding the alleged value and significance of the '983
10:07 22 patent.

10:07 23 So Intel is not seeking broad categories of documents or
10:07 24 information as has been suggested by VLSI. We've identified
10:08 25 very precisely that which we are seeking relief from the

1 protective order to use in the antitrust litigation and very
2 precisely where that information can be found. We're seeking
3 to use in the antitrust litigation a total of three documents
4 subject to this Court's protective order. So it's a very
5 bounded request.

6 VLSI's suggestion that it relied on the protective order
7 somehow being immutable, and its charge that Intel is now
8 reneging on the stipulation is respectfully not correct. The
9 protective order itself makes clear that any party can seek to
10 modify any portion of it.

11 And the three specific pieces of information we've
12 identified comports with what Judge Chen stated. We could seek
13 relief from protective orders in underlying patent infringement
14 litigations to obtain, and with what he indicated was the type
15 of detail that would be relevant to Intel and Apple's
16 allegations about VLSI and others extracting super-competitive
17 royalties.

18 Why is the information about purchase price and damages
19 claims and the differential between them relevant? Well, to
20 just try to briefly summarize. It's relevant for two primary
21 reasons in that litigation. First, it will provide further
22 evidence of how VLSI has sought super-competitive royalties.
23 And, second, the statements of VLSI's own experts about the
24 value and the significance of the '357 and '983 patents will
25 address the issue that Judge Chen raised in his decision of

10:09 1 whether VLSI considers those two patents to be "crown jewels of
10:09 2 the field or just a small portion of a large field of
10:10 3 substitutes."

10:10 4 In opposing our request for relief from the protective
10:10 5 order, VLSI doesn't suggest that the confidentiality of this
10:10 6 information will be jeopardized by the disclosure to another
10:10 7 court, and of course it won't. The information will only be
10:10 8 disclosed to Judge Chen, and it will be under seal. Nor does
10:10 9 VLSI explain how it will be prejudiced in any way by Intel's
10:10 10 request, and of course it won't. It will be free to make its
10:10 11 relevance arguments to Judge Chen.

10:10 12 So at bottom we would suggest VLSI simply wants to keep
10:10 13 information from the Court in the Northern District of
10:10 14 California that would further support the allegations that
10:10 15 Intel and Apple have made in the antitrust litigation. This
10:10 16 presents precisely the situation where courts have granted
10:10 17 relief from protective orders.

10:10 18 So we're coming to Your Honor based upon the paragraphs in
10:10 19 the protective order that say that a party can seek relief to
10:11 20 relax or rescind restrictions. We're seeking very specific
10:11 21 bounded documents. They will be submitted under seal to the
10:11 22 Court in California for purposes relevant to the Court's
10:11 23 decision in California.

10:11 24 THE COURT: Mr. Mann, who will be speaking on behalf of
10:11 25 the plaintiff?

10:11 1 MR. WASHBURN: Good morning, Your Honor -- sorry.

10:11 2 MR. MANN: I'm sorry. Mr. Washburn, Your Honor, to answer
10:11 3 the question.

10:11 4 THE COURT: Thank you, sir.

10:11 5 MR. WASHBURN: And, Your Honor, also on the line is my
10:11 6 colleague, Mr. Harbour. Mr. Harbour is heavily involved in
10:11 7 Intel's antitrust suit against VLSI in Northern California. I
10:11 8 plan to primarily argue, but if Your Honor has questions about
10:11 9 that case, Mr. Harbour may be able to help as well.

10:11 10 THE COURT: Okay.

10:11 11 MR. WASHBURN: Let me briefly address two topics, Your
10:11 12 Honor, starting with why Intel's request should be denied.

10:11 13 First, Your Honor ordered Intel and VLSI in your
10:12 14 protective order to only use confidential information produced
10:12 15 in any of the three cases before Your Honor for purposes of
10:12 16 that case or certain specifically-listed related infringement
10:12 17 cases. You ordered us and Intel not to use confidential
10:12 18 information for any other purpose.

10:12 19 We have obeyed that. For example, although we have access
10:12 20 to a lot of Intel's source code and specifications, and
10:12 21 although we have a lot of patents that are not in this case, we
10:12 22 have not used our access to Intel's source code in this case to
10:12 23 investigate other infringement claims we could file against
10:12 24 Intel.

10:12 25 Respectfully, Intel has already been using information

10:12 1 from this case to develop claims against VLSI here in antitrust
10:12 2 claim. In breach of your order and their own stipulation, they
10:12 3 wouldn't be asking you for this relief if they hadn't already
10:12 4 thought about it.

10:12 5 So, and just as an example, they've stated to Judge Chen,
10:12 6 "the arm's length acquisition prices for these patents are in
10:12 7 the low millions of dollars," and that the damages demands
10:13 8 "exceed by magnitude upon magnitude upon magnitude the
10:13 9 acquisition price."

10:13 10 So they have been using information under your PO to
10:13 11 develop claims, and now they're asking to do it more. And
10:13 12 respectfully, Your Honor, we submit that should not be allowed.
10:13 13 This is analogous to allowing us to use Intel's technical
10:13 14 information in this case to evaluate whether to pursue
10:13 15 additional patent litigation against Intel. And if Your
10:13 16 Honor's not going to allow us to do that, you should also not
10:13 17 allow Intel to do this.

10:13 18 Second reason to deny, Your Honor, Intel has repeatedly
10:13 19 refused --

10:13 20 THE COURT: Let me stop you there.

10:13 21 I'd like to hear from -- I'll let you continue afterwards,
10:13 22 but I'd like to hear from counsel for Intel in response to
10:13 23 that. I think that's a pretty compelling argument about metes
10:13 24 and bounds of what was exchanged in this case and what it could
10:13 25 be used for. And if it wasn't this case, it was certainly in

10:13 1 13 million others that I've heard fights between counsel, when
10:14 2 the lead fights we have when turning over source code is making
10:14 3 sure that we quarantine it so that it's used for this
10:14 4 litigation and not by plaintiffs like VLSI for future
10:14 5 litigation, specifically as you said.

10:14 6 So I'd like to hear from Intel's counsel as to why the
10:14 7 same -- why it's not a mirror concern here that Intel be able
10:14 8 to use information that VLSI provided to it under the
10:14 9 protection of this protective order.

10:14 10 I've already heard and understand that the boilerplate
10:14 11 language that is in every protective order that, you know,
10:14 12 allows it to be modified or allows me to modify it. But I'd
10:14 13 like to hear, Mr. Selwyn, if you would directly address what
10:14 14 was just said.

10:14 15 MR. SELWYN: Certainly. Your Honor, we have not used any
10:15 16 of the protected information we are seeing from this case for
10:15 17 the antitrust litigation, and we will not unless and until
10:15 18 given permission to do so.

10:15 19 As the protective order in this case contemplates, we are
10:15 20 seeking permission from this Court to use the protected
10:15 21 information we have specified from this case for the antitrust
10:15 22 litigation, and VLSI is challenging us for asking for
10:15 23 permission. That is not in any way a violation of a protective
10:15 24 order.

10:15 25 Under VLSI's reasoning, a party would never be able to

10:15 1 move for relief from a protective order without violating that
10:15 2 protective order, because in its mere suggestion by a party
10:15 3 that it has identified information or categories of information
10:15 4 for another case would itself be a protective order violation.

10:15 5 THE COURT: Mr. Selwyn, forgive me, but you're not
10:15 6 addressing at all what I just asked.

10:16 7 I get that there are reasons why you have -- you could
10:16 8 look back, looking backwards you might say, "Okay, I'm going to
10:16 9 allow this to be used."

10:16 10 What I would like you to specifically address to me is --
10:16 11 I can only imagine what Intel's response would be if
10:16 12 Mr. Washburn came in and said, "We've changed our mind. We'd
10:16 13 like to go file some more lawsuits against Intel. We'd like to
10:16 14 use the source code that was provided to us in this case under
10:16 15 the protective order with an agreement that we wouldn't use it
10:16 16 in future cases, and, Judge, look at this boilerplate language
10:16 17 here. It says 'protective orders are always subject to change'
10:16 18 and so, you know, wave my hands and it's okay."

10:16 19 My question to you is this: Is to me -- to me I find the
10:17 20 information that you are seeking from the plaintiff here to be
10:17 21 equally the crown jewels that Intel would -- I can't think of
10:17 22 anything that is more of a crown jewel to the plaintiff, this
10:17 23 kind of plaintiff than the information you're seeking; and so
10:17 24 to me it's information of equal dignity and Intel certainly
10:17 25 would never agree that its source code that's provided in this

10:17 1 case so that the plaintiffs could make their infringement
10:17 2 contentions would ever be allowed to be used in a manner in
10:17 3 another case, to shore up infringement contentions in another
10:17 4 case, to create new infringement contentions, to bring
10:17 5 lawsuits, so I want you to address not whether or not the
10:17 6 protective order allows for an amendment to be made.

10:18 7 Tell me why if the exchange -- the consideration that was
10:18 8 exchanged between the parties here was plaintiff gave this kind
10:18 9 of crown jewel information to the defendant under a
10:18 10 confidentiality agreement that it wouldn't be used for any
10:18 11 purpose other than this litigation, Intel provided its source
10:18 12 code so that as crown jewel information with the agreement it
10:18 13 wouldn't be used or seen by anyone outside of this litigation,
10:18 14 why should I not protect the information that the plaintiff
10:18 15 wants me to protect?

10:18 16 And let me add one more thing. An argument I could
10:18 17 foresee would be that if there's information -- I anticipate
10:18 18 Intel wanting to be pretty careful during the trial when source
10:18 19 code is discussed. I'm anticipating Intel is going to say:
10:19 20 We'd like to close the courtroom. We'd like this to be
10:19 21 confidential because we don't want this information getting
10:19 22 out.

10:19 23 I can see -- I could see the plaintiff saying exactly the
10:19 24 same thing with the reciprocal information of theirs: We don't
10:19 25 want this information getting out.

10:19 1 So I anticipate that even during the course of trial this
10:19 2 information won't become public and, therefore, the exchange of
10:19 3 it was given by the parties with the understanding that it
10:19 4 would be maintained confidential and quarantined in this case.
10:19 5 So that's what you need to address.

10:19 6 MR. SELWYN: The information that we're seeking would
10:19 7 continue to remain confidential. It would be subject to --

10:19 8 THE COURT: And used only in this case. I mean, that's
10:19 9 the problem. I get it's going to remain confidential until,
10:19 10 for example, the judge decided it wouldn't have to be
10:19 11 confidential.

10:19 12 I mean, once it's cabined only -- once I allow it to go to
10:20 13 that court, it's cabined only under his discretion of whether
10:20 14 or not -- and I'm not debating that. I would feel the same way
10:20 15 if it came to me. I would say now it's in my court and I'm
10:20 16 going to exercise it, and I'm completely okay with the idea
10:20 17 another federal judge would then decide whether my issue is the
10:20 18 information was exchanged to Intel, only with the agreement
10:20 19 that it would not be used except in this litigation.

10:20 20 And that seems pretty obvious to me. In all the years
10:20 21 I've practiced, I can't -- and I long ago represented Intel. I
10:20 22 can't even imagine Intel agreeing to give up information in
10:20 23 this case, in a case knowing that a judge could decide that
10:20 24 the -- a non-practicing entity would be able to use it for any
10:20 25 other reason other than in this case, especially for help in

10:20 1 another litigation, which is exactly -- there's no difference
10:21 2 between you wanting to use this information in your antitrust
10:21 3 case than it is my good friend Mr. Washburn wanting to use your
10:21 4 Intel source code to bring other patent lawsuits.

10:21 5 It's -- you want to use confidential information in this
10:21 6 case, in another case, in another litigation, and that is not
10:21 7 at all what the plaintiff agreed to, anymore than Intel agreed
10:21 8 to the use of the source code.

10:21 9 MR. SELWYN: And, Your Honor, the source code is a good
10:21 10 example because, in fact, the parties have agreed that there
10:21 11 would be cross use of the source code between the cases. And
10:21 12 that's by agreement to the parties, which the protective order
10:21 13 allows the parties to do.

10:21 14 THE COURT: The cases in this Court. The case that's in
10:21 15 this Court.

10:21 16 MR. SELWYN: No, Your Honor. The cases in this Court and
10:21 17 the cases in Delaware. So it's cross use between courts.

10:21 18 THE COURT: But not to -- but you have not agreed -- if
10:21 19 you've agreed -- I'll tell you what, I'll make a deal with you.
10:21 20 Let's cut direct to the chase.

10:22 21 If Intel is willing to agree to allow Mr. Washburn and
10:22 22 VLSI to use the source code that Intel has produced for the
10:22 23 purposes of use in current litigation -- I'm aware of the
10:22 24 Delaware litigation in fact -- if Intel is willing to strip
10:22 25 from the protective order the use -- the protection from the

10:22 1 use of source code for other purposes for other litigation --
10:22 2 and by that I mean to determine whether or not Intel -- other
10:22 3 Intel products infringe other patents that VLSI owns, then I'll
10:22 4 be happy to consider allowing you to use this information of
10:22 5 VLSI's in the California litigation.

10:22 6 MR. SELWYN: So with respect, Your Honor, I think that
10:22 7 this is a different issue. And it's a different issue because
10:22 8 Judge Chen has said that this is information that would lend
10:22 9 further support to the allegations in Intel and Apple's
10:23 10 complaint to be filed next month. And he indicated that this
10:23 11 was the type of thing that Intel could have sought relief under
10:23 12 the terms of the protective order to obtain.

10:23 13 And I would respectfully suggest that Paragraph 65 of the
10:23 14 protective order, it is not mere boilerplate but it's an
10:23 15 important part of protective orders that allow parties to come
10:23 16 back where there is relevant information to be used in another
10:23 17 forum.

10:23 18 Now, you have to, of course, ask permission for that.
10:23 19 There has to be made a showing of why you want to use it. For
10:23 20 example, in the Peleton case that we refer to in the table,
10:23 21 Judge Payne considered a similar situation where a party wanted
10:23 22 to use protective information before the PTAB. And a similar
10:23 23 argument was made by the party opposing production.

10:23 24 And Judge Payne said even though at the time the
10:23 25 protective order was entered, the party that produced the

10:24 1 information may have assumed it would only be used for this
10:24 2 case, they couldn't have anticipated this situation.

10:24 3 THE COURT: Was the PTAB case in that case related to the
10:24 4 same patents that were asserted?

10:24 5 MR. SELWYN: Yes.

10:24 6 THE COURT: Okay. I don't see that similar in any way to
10:24 7 this. Do you have anything else that you'd like to add?

10:24 8 MR. SELWYN: I think it is similar because it goes to the
10:24 9 question of the relevance of the information to be considered
10:24 10 by another forum.

10:24 11 Here we have a situation where there really is no dispute
10:24 12 that it would be relevant to Judge Chen, that he has indicated
10:24 13 in his decision that it's relevant and that it will be
10:24 14 protected and sealed in the Northern District of California.

10:24 15 So this is a typical situation of coming back to the
10:24 16 Court, asking for permission for relief to use what is clearly
10:24 17 relevant information and that it remained sealed --

10:24 18 THE COURT: If it is typical, why have I not seen it in
10:24 19 two and a half years? It's not typical to me and I don't
10:25 20 recall, in the 20 years I practiced, this happening either.

10:25 21 MR. SELWYN: It is, I would say, Your Honor, a typical
10:25 22 situation for seeking relief from a protective order. Granted,
10:25 23 parties don't often come to seek relief, but this is a
10:25 24 situation where another federal judge has expressly said: This
10:25 25 is information that could be considered in support of Intel's

10:25 1 and Apple's amended complaint.

10:25 2 So you may not see these motions every day, but it is a
10:25 3 typical situation where it is appropriate to grant relief from
10:25 4 the strictures of the protective order where the information is
10:25 5 relevant. There's no question that it will be maintained in
10:25 6 confidence by the other court and there's no prejudice to the
10:25 7 party opposing the production.

10:25 8 THE COURT: Anything else you'd like to add?

10:25 9 MR. SELWYN: No, Your Honor.

10:25 10 THE COURT: Okay. I'll be back with y'all in a few
10:25 11 seconds.

10:25 12 (Pause in proceedings.)

10:29 13 THE COURT: If we could go back on the record, please.

10:29 14 The Court is going to deny the relief that Intel is
10:29 15 seeking. Let me make as clear as possible, I have great
10:29 16 respect for my brethren in California, and I certainly am not
10:29 17 doing this because I have any doubt that information that he
10:29 18 would be using would be maintained in an entirely appropriate
10:29 19 manner; but I'm going to choose not to amend my protective
10:29 20 order for the reasons I think I've made pretty clear on the
10:29 21 record.

10:29 22 Mr. Mann, is there any other issue that we need to take up
10:29 23 this morning?

10:29 24 MR. MANN: No, Your Honor.

10:29 25 THE COURT: Mr. Ravel?

10:29 1 MR. RAVEL: No, Judge. That's it.

10:29 2 THE COURT: Let me ask you this. You're free -- I'll
10:29 3 start with Mr. Mann and then you're free to tell me it's none
10:30 4 of my business. I'm just a little curious. When are you folks
10:30 5 headed to Waco, Mr. Mann?

10:30 6 MR. MANN: I'm heading there Thursday. I think my
10:30 7 colleagues from California are coming in Saturday. There's
10:30 8 probably the preparatory team coming in Wednesday or Thursday
10:30 9 for other issues at the hotel.

10:30 10 THE COURT: Mr. Ravel?

10:30 11 MR. RAVEL: I think pretty close to the same time, maybe
10:30 12 trending toward the beginning part of next week.

10:30 13 THE COURT: Okay. I hope you all -- I hope we've made
10:30 14 clear to you all that you have complete, open access to the
10:30 15 courtroom for your folks to come in and set up whatever
10:30 16 equipment you need to set up.

10:30 17 Are you all working with Blake or one of my law clerks,
10:30 18 whoever it is, if you don't have Blake's number, you should get
10:30 19 it on speed dial and make sure -- he's my technical person --
10:30 20 and I'm telling you in advance you have permission during
10:31 21 regular work hours to come in at any time and be setting up for
10:31 22 the trial.

10:31 23 So if you have any issues there, please let me or my law
10:31 24 clerks know and I will take care.

10:31 25 MR. MANN: Thanks, Your Honor. Mr. Ravel and I are

10:31 1 talking evidently on trying to set up a live feed to some other
10:31 2 rooms that we can use. So...

10:31 3 THE COURT: Great. Great. Yeah. I think -- and I would
10:31 4 not mind having your input -- my thinking is, at the moment,
10:31 5 we've got two really big rooms. I'm sure you've been to both
10:31 6 of them which are the other courtrooms and then the jury -- not
10:31 7 my little jury usual room, but where we bring the jurors, all
10:31 8 the jurors in, we do the grand jury. You all might try and
10:31 9 figure out which you think is the better -- last time we had
10:31 10 the jurors, last three times I think we put the jurors in the
10:32 11 other district courtroom and let them spread out, and put the
10:32 12 video feed in the big jury impaneling room.

10:32 13 I'm not sure that that's the best way one way or the
10:32 14 other, and what I would suggest is whichever is easier to do
10:32 15 the live feed to would be the one not to put the jury in
10:32 16 because they're not going to need it. They're going to be in
10:32 17 person.

10:32 18 So if one room or the other is easier to do, because I
10:32 19 anticipate some members of the public would want to come in and
10:32 20 watch lawyers of this caliber try this case, and so I want to
10:32 21 make it as accessible to the public as I can through that feed.

10:32 22 So, again, as you're working with Blake, whichever makes
10:32 23 the most sense to you all is -- would be absolutely fine with
10:32 24 me. So...

10:32 25 MR. MANN: Thank you, Your Honor.

10:32 1 MR. RAVEL: Judge, thanks for that. While we're on the
10:32 2 subject, the pretrial order between the parties contemplates
10:33 3 that the -- it could be broader than that, to anyone who is
10:33 4 entitled to see it and...

10:33 5 THE COURT: You blanked out on whatever your key word was.
10:33 6 I don't know what it is you're talking about because the --
10:33 7 your mic went out. What is the topic we're talking about?

10:33 8 MR. RAVEL: Under the parties' pretrial order they had
10:33 9 suggested that the feed can be --

10:33 10 THE COURT: Oh, the feed --

10:33 11 MR. RAVEL: -- seen by anyone who is allowed under the
10:33 12 protective order to see it.

10:33 13 THE COURT: Yes, sir.

10:33 14 MR. RAVEL: And the preliminary view from technical people
10:33 15 is that that puts no stress on the Court, that once we have the
10:33 16 feed, we can then use it appropriately. And I just wanted the
10:33 17 Court to know about that pretrial order --

10:33 18 THE COURT: I think --

10:33 19 MR. RAVEL: -- agreement and that the parties are working
10:33 20 together to both make this safe in the COVID sense and to put
10:33 21 this Court on the map. There is a technical superstar who
10:34 22 allows all that to happen.

10:34 23 THE COURT: Yeah. Let me ask you one more thing. And I'm
10:34 24 not holding you to either -- this is purely for planning
10:34 25 purposes. You can -- if this changes, you just need to let the

10:34 1 other side know a day or two ahead of time.

10:34 2 But, Mr. Mann, do you plan to have anyone attending as a
10:34 3 witness by video?

10:34 4 MR. MANN: I think we may have one, at least, but I --
10:34 5 that's not been finalized yet.

10:34 6 THE COURT: Okay. And the only reason I care, again, is
10:34 7 this: Number one, the time to let the other side know it's
10:34 8 going to be by video is not that morning. And the time to let
10:34 9 me know, unless something really happens, is not that morning,
10:34 10 just because I want to make sure it works, not being all
10:34 11 federal judgy about it. You guys have complete control of the
10:34 12 order of witnesses and all that. That's what trial lawyers do.

10:34 13 It's just I want to make sure, number one, if you tell me
10:34 14 Dr. Smith is going to be there on Tuesday but he's going to be
10:35 15 by videotape, we know to be ready for that. And also the other
10:35 16 side knows how they're going to have to prepare for it. And
10:35 17 vice versa. And that might be the only thing that would be a
10:35 18 little bit harder to do just on the ad-lib unless something
10:35 19 came up.

10:35 20 I think I've told you this before too, if you have anyone
10:35 21 who is going to attend in person who has any sensitivity about
10:35 22 coming through the courtroom -- I'm sorry, courthouse, let me
10:35 23 know in advance and we will adapt to that and make sure that
10:35 24 that person can enter and leave the courtroom as safely as
10:35 25 possible. I'm happy to make that accommodation.

10:35 1 And then, finally, there is -- there have been requests
10:35 2 from reporters to be able to attend the trial by Zoom. That is
10:36 3 fine with me. I'm not sure it's fine with the judicial world,
10:36 4 however, so I'm going to look into that myself and make sure
10:36 5 that -- you keep telling me they can't fire me, but I don't
10:36 6 want to test that theory. And so -- I kind of already am, I
10:36 7 guess, but...

10:36 8 And so does anyone have -- would anyone have an
10:36 9 objection -- and this would not be during anything that was
10:36 10 where the courtroom was closed for tiny amounts of time -- but
10:36 11 does either party have any objection to -- if I get approval to
10:36 12 allow reporters to attend the trial by Zoom, does anyone object
10:36 13 to that?

10:36 14 I'll start with Mr. Ravel, just because he's dead center
10:36 15 in my screen.

10:36 16 MR. RAVEL: It's not something we've talked about
10:36 17 internally, Judge. I'd want to have a caveat that I could get
10:36 18 overruled by this, but I don't see any problem with that at
10:36 19 this point, with the Court's caveat that both sides'
10:37 20 confidential information is --

10:37 21 THE COURT: Correct. No, no, no. I will -- in fact, that
10:37 22 will be the easiest thing to do, will be to shut that video
10:37 23 feed off during that period of time. That's easier than
10:37 24 clearing the courtroom, so yeah.

10:37 25 But I'm just -- I want to make sure you all don't object.

10:37 1 If I can get permission to allow reporters to attend by Zoom,
10:37 2 that would be my preference. You know, because people can't
10:37 3 attend it in person. I mean, we're going to be limited on
10:37 4 people space.

10:37 5 MR. RAVEL: Judge, that concept is consistent with what
10:37 6 the parties are working toward on the pretrial order. So it
10:37 7 basically sounds good to us.

10:37 8 THE COURT: Mr. Mann?

10:37 9 MR. MANN: I think I have been saying both, Your Honor. I
10:37 10 don't see an issue, but I need to talk to my colleagues and --

10:37 11 THE COURT: Okay. And your client. And by the way, this
10:37 12 is one of those deals where you get a veto. I mean, if someone
10:38 13 says, no, we don't want that, then I won't do it. I'm -- you
10:38 14 know, during COVID time being able to do this means fewer
10:38 15 people trying to get into the limited number of seats that
10:38 16 we're going to be having in the courtroom, is the deal. So
10:38 17 hopefully it won't be a big deal for you all, but certainly let
10:38 18 me know. Okay.

10:38 19 MR. TINDEL: Judge.

10:38 20 THE COURT: Mr. Tindel?

10:38 21 MR. TINDEL: When you say "reporters to participate by a
10:38 22 Zoom link," do you mean just specified people having a Zoom
10:38 23 link or are you talking about an open public link that
10:38 24 reporters or anybody else can dial into?

10:38 25 THE COURT: At the moment I'm just talking about reporters

10:38 1 who request it. I don't know what the rules are at this point
10:38 2 on allowing the world to watch -- again, not sensitive periods,
10:38 3 but I'm not sure what the rules are on me making the Zoom feed
10:38 4 live and available to everyone.

10:38 5 That would be a pretty bold thing for a federal court to
10:39 6 do, and I just don't know if I have the -- I think it would be
10:39 7 great. I mean, I can't imagine any reason why -- you know, the
10:39 8 Supreme Court is -- they're not on video, but they're doing
10:39 9 live feeds of their -- to the world now, you know. When the
10:39 10 Supreme Court has oral arguments, I'm sure you all, like me,
10:39 11 are right there listening to them live, because I have -- I
10:39 12 just don't have anything better to do. And that's a true
10:39 13 story. I really do do that.

10:39 14 But, you know, maybe we are evolving in federal courts to
10:39 15 the idea that people will be able to attend things in that
10:39 16 manner, because -- but I will have to get approval for that.

10:39 17 MR. MANN: I'd like to exclude my wife, because of her
10:39 18 criticisms of me. So...

10:39 19 (Laughter.)

10:39 20 THE COURT: I can't imagine any woman being married to
10:39 21 you, Mark Mann, that doesn't feel like every day like she's the
10:39 22 luckiest person on the planet.

10:39 23 MR. MANN: Judge, I'm sending that home to her.

10:39 24 MR. TINDEL: Judge, I know Debbie and she does not feel
10:40 25 that way.

10:40 1 (Laughter.)

10:40 2 MR. MANN: Somebody has to keep you grounded.

10:40 3 THE COURT: I understand. In fact, as soon as I hang up
10:40 4 here I'm going to go find out just how happy my wife is with me
10:40 5 this morning. So we'll see. So it's a Monday, you never know.

10:40 6 But so, you gentlemen have a great afternoon, and I look
10:40 7 forward very much to seeing you in -- two weeks from tomorrow.
10:40 8 If anything comes up, by the way, especially with regard to
10:40 9 doing the voir dire that is a problem between now and then that
10:40 10 you think of, please let me know and we'll take care of it,
10:40 11 because that's just a week from Thursday.

10:40 12 MR. TINDEL: Judge, one more question.

10:40 13 THE COURT: Of course.

10:40 14 MR. TINDEL: The 15th, which is the President's Day
10:40 15 holiday, is the courthouse going to be closed?

10:40 16 THE COURT: I'm sure it will be. Yeah. I will have no
10:40 17 one -- I mean, if you guys need to be let in, I don't know if
10:40 18 I'll be there or not. Probably my law clerks will be, and if
10:40 19 we need to let you -- but I'm not even sure I could allow you
10:41 20 guys in, because my guess is we'll have no security in the
10:41 21 courthouse. And I'm not sure I can let people just be in the
10:41 22 courthouse. If an emergency comes up and you all need to get
10:41 23 in for some reason, and Evan or someone's there and can let you
10:41 24 in and do something short and quick, I'm sure that'll be fine.
10:41 25 But I'm 99 percent sure that the courthouse will be closed and

10:41 1 will have no security, and I don't know that I would be allowed
10:41 2 to let you all in.

10:41 3 MR. TINDEL: So the safe thing to do would be all our
10:41 4 technical setups for both parties, et cetera, really needs to
10:41 5 get done Friday.

10:41 6 THE COURT: Yes. I could not put it better. That's why
10:41 7 I'm telling you on February 1st you have between now and a week
10:41 8 from Friday, you have open access and during business hours to
10:41 9 have anyone come in there at any time.

10:41 10 I don't think -- I may have sentencings this Wednesday and
10:42 11 next. Well, Wednesdays are the only days I do things in person
10:42 12 in the court, because that's when I do my sentencings, and I
10:42 13 have to do those in person mostly. But other than that, the
10:42 14 courtroom is yours to do whatever you want to.

10:42 15 MR. TINDEL: Thank you.

10:42 16 THE COURT: But I would say, yeah. I would say Friday at
10:42 17 5 o'clock, a week Friday at 5 o'clock is drop dead.

10:42 18 And Evan just texted me -- this is what makes technology
10:42 19 so great. I could act like I know what my schedule is but I
10:42 20 don't. I have sentencings this week but none next week, so
10:42 21 literally all five days next week are available to your
10:42 22 technical people.

10:42 23 MR. TINDEL: Thank you, Your Honor.

10:42 24 THE COURT: Now, if we're going to be on Zoom, someone
10:42 25 needs to help me make sure that I find a way to look good if

10:42 1 I'm going to be on Zoom. Maybe I should make that a rule that
10:42 2 they can't show me. So, but at least it means for a change
10:42 3 I'll stay awake during the trial. That'd be a good thing.

10:42 4 So anything else?

10:42 5 MR. RAVEL: No, Judge.

10:43 6 THE COURT: Okay. Y'all have a good afternoon. Take
10:43 7 care.

10:43 8 (Hearing adjourned at 10:43 a.m.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 1st day of February 2021.

12
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